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Safety & Soundness

Federal Reserve Board Proposes Total Loss Absorbing Capacity and Long-Term Debt Requirements for Certain Bank Holding Companies and Intermediate Holding Companies

The Federal Reserve Board (Federal Reserve) issued a proposed rule on October 30, 2015, that would introduce new total loss absorbing capacity, long term debt, and clean holding company requirements for U.S. entities identified by the Federal Reserve as global systemically important bank holding companies (G-SIBs and covered BHCs) and the U.S. intermediate holding companies of global systemically important foreign banking organizations with $50 billion or more in U.S. non-branch assets (covered IHCs). Under the proposed rule, covered BHCs would be required to maintain outstanding minimum levels of total loss-absorbing capacity (TLAC) comprised of tier 1 regulatory capital and "plain-vanilla" long-term unsecured debt (LTD) instruments, and a related buffer. Similarly, covered IHCs would be required to maintain outstanding minimum levels of TLAC and LTD issued to their foreign parent company and a related buffer. Both covered BHCs and covered IHCs would be subject to a "clean holding company" limitation that would restrict certain of the entities' liabilities that could impede an orderly resolution.

As proposed, the rule would become effective January 1, 2019, with some phase in of requirements through January 1, 2022. Comments are requested to be submitted no later than February 1, 2016. [Press Statement] [Proposed Rule]

OCC Revises Floor Plan Lending Booklet

The Office of the Comptroller of the Currency (OCC) issued a revised "Floor Plan Lending" booklet in the *Comptroller's Handbook* on October 27, 2015. The revised booklet updates and replaces the "Floor Plan Loans" booklet issued by the OCC in March 1990 (and examination procedures issued in May 1998), as well as section 216, "Floor Plan and Indirect Lending," issued in January 1994 as part of the former Office of Thrift Supervision *Examination Handbook* for the examination of federal savings associations. The revised booklet provides examiners with an overview of the floor plan lending business, associated risks, and sound risk management practices, along with expanded examination procedures and tools to use during supervisory activities that focus on this type of lending. [Press Statement] [Revised Booklet]

Enterprise & Consumer Compliance

CFPB Releases Monthly Complaint Report

The Consumer Financial Protection Bureau (CFPB or Bureau) released its *Monthly Complaint Report* on October 29, 2015, outlining the consumer complaints received by the Bureau during the month of September. Highlights of the report indicate that: debt collection continues to be the most-complained-about financial product or service, representing approximately 29 percent of complaints submitted in September; and, in a year-to-year comparison, complaints about debt settlement, credit repair, and check cashing showed the greatest percentage increase. This edition of the report also features credit card complaints, noting that common credit card complaints pertain to the assessment of late fees, inaccuracies on billing statements, and account closures without consent. [Press Statement] [Complaint Report]

Enforcement Actions

The Consumer Financial Protection Bureau (CFPB or Bureau) announced the following enforcement actions:

- The Bureau filed a complaint against a company and its owner (the Defendants) to address the CFPB's findings they operated a deceptive scheme to persuade prospective and current college students and their families to pay a fee to participate in a student financial aid program that would match the student with financial aid opportunities. The CFPB alleges the Defendants' actions violated the unfair, deceptive, and abusive acts or practices provisions of the *Consumer Financial Protection Act*. In addition, the CFPB alleges the Defendants misrepresented their affiliations with government and university financial aid offices, falsely created a sense of urgency to motivate consumers to participate in the program, and failed to provide privacy notices as required under federal law. The CFPB is seeking restitution for harmed consumers and civil money penalties.
- The Bureau announced that it has entered into a consent order with two affiliated companies that provide applicant and employee background screening reports to address the CFPB's findings the companies violated the *Fair Credit Reporting Act* by, among other things, failing to employ "reasonable procedures to assure the maximum possible accuracy of the information contained in reports provided to consumers' potential employers." Example violations alleged by the CFPB included, failures to employ basic procedures for matching public records information to the correct consumer, and failing to take measures to prevent certain non-reportable information older than seven years from being included in the reports. Without admitting or denying the CFPB's findings, the companies agreed to: provide $10.5 million in relief to harmed consumers; revise procedures to assure reporting accuracy; engage an independent consultant to review and assess the companies' policies, procedures, staffing levels, and systems; develop a written audit program to test the accuracy, integrity, and completeness of the public-record information sourced to generate the companies' background reports; and pay a $2.5 million civil money penalty.

FTC Joins International Information Sharing Initiative to Protect Consumer Privacy

On October 26, 2015, the Federal Trade Commission (FTC) announced that it was joining with the enforcement agencies of seven other countries (Australia, Canada, Ireland, Netherlands, New Zealand, Norway, and United Kingdom) to launch a new information sharing system, GPEN Alert, which is intended to enable better international coordination in protecting consumer privacy. Participants in GPEN Alert are expected to be able to confidentially share information regarding investigations. [Press Statement]

Capital Markets and Investment Management

SEC Adopts Final Rules to Permit Crowdfunding

On October 30, 2015, the Securities and Exchange Commission (SEC) adopted final rules establishing new Regulation Crowdfunding, which will govern the offer and sale of securities by companies through the internet as well as provide a framework for regulating the registered funding portals and broker-dealers that issuers are required to use as intermediaries in the offer and sale of securities through crowdfunding. The final rules limit the amount of money an issuer can raise in a 12-month period to $1 million, and limit the amount that an individual may invest in crowdfunding offerings to an amount based on a combination of the individual's annual income and net worth, subject to a maximum of $100,000 in a 12-month period. The rule also imposes disclosure requirements on issuers for certain information about their business and the securities offering, as well as annual reporting requirements. Regulation Crowdfunding will become effective 180 days after publication in the *Federal Register*. Forms enabling funding portals to register with the SEC will be effective January 29, 2016. [Press Statement] [Final Rules]

Concurrent with the adoption of Regulation Crowdfunding, the SEC proposed amendments to existing Rule 147 under the *Securities Act of 1933* (Securities Act), to modernize the rule for intrastate offerings to further facilitate capital formation, including through intrastate crowdfunding provisions. The proposal also would amend Rule 504 under the Securities Act to increase the aggregate amount of money that may be offered and sold pursuant to the rule from $1 million to $5 million and apply "bad actor" disqualifications to Rule 504 offerings to provide additional investor protection. The SEC is seeking public comment on the proposed rule amendments for a 60-day period following their publication in the *Federal Register*. [Proposed Rule]

FINRA Amends Reporting Requirements for TRACE-Eligible Securities

The Financial Industry Regulatory Authority (FINRA) issued Regulatory Notice 15-41 on October 27, 2015, to announce that the Securities and Exchange Commission (SEC) has approved amendments to the Trade Reporting and Compliance Engine (TRACE) Rule 6730 to codify that firms are required to report transactions in TRACE-eligible securities that are subject to dissemination "as soon as practicable" following the time of execution of the transaction. The amendment will become effective on November 30, 2015. [Regulatory Notice 15-41]

House Passes Bill to Restrict Department of Labor from Finalizing Fiduciary Rule

On October 27, 2015, the House of Representatives passed H.R. 1090, the *Retail Investor Protection Act*, by a vote of 245-186. The Bill would prohibit the Department of Labor (DOL) from issuing regulations defining the circumstances under which an individual is considered a fiduciary of an employee benefit plan under the *Employee Retirement Income Security Act of 1974* (ERISA) until a date that is 60 days after the Securities and Exchange Commission (SEC) issues a final rule relating to standards of conduct for brokers and dealers. The DOL released a proposed rule earlier this year that is intended to address conflicts of interest related to retirement investment advice.

Enforcement Actions

The Securities and Exchange Commission (SEC) and the Financial Industry Regulatory Authority (FINRA) announced the following enforcement actions in the past week:

- The SEC announced that it had barred two brokers at a now-defunct brokerage for giving customer order information to certain favored customers, helping those customers to get better prices while generating extra commissions for their firm. Without admitting or denying the charges, each of the brokers agreed to pay a financial penalty, resulting in a combined total payment of $175,000.
- The SEC charged a credit rating agency with misrepresenting its surveillance methodology for ratings of certain complex financial instruments during a three-year period. In particular, the SEC found the firm did not present the ratings for a review to the surveillance committee each month, did not disclose changes to certain surveillance methodologies, and did not have sufficient staff and technological resources to conduct the surveillance, as required. The firm agreed to pay nearly $6 million to settle the charges, including approximately $2.9 in disgorged surveillance fees and interest, and a civil money penalty of more than $2.9 million. The firm was also required to retain an independent consultant to assess and improve its internal controls.
- FINRA ordered five firms to pay restitution estimated at more than $18 million, including interest, to affected customers for failing to waive mutual fund sales charges for eligible charitable organizations and retirement accounts, which resulted in those customers being overcharged.

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